IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4920 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SABARKANTHA DIST. COOP. CASTOR OIL SEEDS GROWERS UNION
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 4920 of 2002
MR BS PATEL for Petitioner No. 1
MRS RANJAN B PATEL for Petitioner No. 1
Ms.Harsha Devani,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 30/07/2002

ORAL JUDGEMENT

Rule. Ms.Devani, Ld.AGP for respondents waives service of rule. With the consent of parties matter is

taken up for final hearing.

2. The short facts of the case are that when the Managing Committee of the petitioner society was holding the charge on 17.8.99 the appointment of custodian was made under section 74D of the Gujarat Coop.Societies Act (hereinafter referred to as "the Act"). The said order of appointing the Custodian was challenged in Special C.A.No.6185/99 and on 19.8.99 this court (M.R.Calla,J) had stayed the order of appointing the custodian. On 23.8.99 the custodian addressed a letter intimating that in view of the order passed by this court in Spl.C.A.No.6185/99 the Managing Committee would be continued. Thereafter, on 25.8.99 upon the application moved by the authority, this court (M.S.Shah,J) passed an order for maintaining statusquo. In this manner, matter was at large pending before this court on the question of appointment of custodian under section 74D of the Act and this court had granted stay as indicated earlier.

3. Pending the aforesaid, on 6.3.2000, it appears that the interim order of liquidation came to be passed by the Registrar without giving any opportunity of hearing to the members of the Managing Committee of the society. The said order was challenged by the petitioners in Spl.C.A.No.1633/2000 and in the said matter this court had passed interim order for maintaining statusquo. Inspite of the fact that the said statusquo was in operation on 10.10.2000 final order for winding up has been passed. The petitioner had challenged at the final order of the liquidation dated 10.10.2000 by amending Spl.C.A.No.1633/2000 and ultimately both the aspects, namely, the legality and validity of the interim order as well as the final order were considered by this court in Spl.C.A.No.1633/00 and on 28.3.2002 this court had passed order relegating the petitioner to alternative statutory remedy of revision and till it was decided the interim order of maintaining statusquo was continued.

4. It appears that the petitioners preferred revision before the State Govt and the said revision is dismissed as per order dated 3.5.2002. Aggrieved by the said order of the State Govt, petitioners have preferred this petition challenging the interim order of liquidation as well as final order of the liquidation.

5. Mr.Patel for the petitioners has submitted that the first order dated 6.3.2000 is without giving any opportunity of hearing to the members of the Managing Committee of the petitioner society and therefore the

said order is bad in law in view of the decision in the matter of Apexa Coop.Bank Ltd vs District Registrar and another reported in 1993(2) GLH 861. He further submitted that in any case so far as the final order of the liquidation is concerned same is in countravention to the order passed by this court in as much as though there was an order of stqtusquo, final order could not have been passed and inspite of the same final order of liquidation has been passed. He submitted that the revision was also preferred by the petitioners before the State Govt and the said aspect is not considered and hence this petition.

6. On behalf of the respondent authorities Ms.Devani has not been able to dispute the existence of statusquo when the final order of liquidator came to be passed. Respondent authorities have not been able to show whether any opportunity of hearing has been given to the petitioners before passing interim order of liquidation. Ld.AGP also submitted that in any event even if some infirmities are found in the order of liquidation the fact remains that the term of the Managing Committee has expired and therefore they can not be reinducted in office while considering the matter for passing consequential order.

7. In response to the last contention of the respondents, Mr.Patel submitted that the petitioners have no objection if the election of the members of the Managing Committee of the petitioner society is held and the said body which may be elected is given hearing, if at all the authority considers necessary to pass order of liquidation.

8. In view of the above submissions of both sides, it is clear that the first order dated 8.3.2000 which is an interim order for liquidation is passed without giving hearing to the office bearers of the society and therefore the matter would be covered by the judgment of this court in the matter of Apexa Cooperative Bank Ltd vs District Registrar and others reported in 1993(2) GLH 861 and therefore the said order can not stand in the eye of law.

9. So far as the final order of liquidation is concerned, same is, in any case, contrary to the order passed by this court in as much as when there was an order of statusquo against the interim order of winding up, the authority could not have passed the final order of liquidation. Therefore, said final order of liquidation deserves to be quashed on the face of it.

10. The last aspect which is required to be considered is that in any case the statutory term of the members of the Managing Committee is over and therefore even if both the orders, namely, the interim order of liquidation as well as final order of liquidation are quashed, they can not be reinducted in the office, but, at the same time, if appropriate directions are not given it may create vacuum which would adversely affect the administration of the society. Since Mr.Patel has also agreed for election of the members of the Managing Committee it would be just and proper that if the election of the members of the Managing Committee is held and thereafter the matter is considered for the purpose of passing order of liquidation, if required.

11. In the result, the orders dated 8.3.2000 and 10.10.2002 of interim order of liquidation and final order of liquidation respectively are quashed and as a consequence thereof the order passed by the revisional authority dated 3.5.2002 is also quashed with the clarification and direction that the District Registrar or his authorised representative shall hold the election of the members of the Managing Committee of the petitioner society within a period of two months from today and until the election is held and until the newly elected body takes over, the charge shall be retained by the District Registrar. After the election is held newly elected body shall be entrusted with the administration of the society and thereafter it will be open to the respondent authority to consider the question of passing the interim order of liquidation and final order of liquidation after giving opportunity of hearing to the newly elected body and in accordance with law.

12. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

30.7.02 (JAYANT PATEL,J)